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August 28, 1995

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Comments in MM Docket No. 95-90

Dear Mr. Caton:

Enclosed are the original and five copies of the Comments of Stations Representatives Association in MM Docket No. 95-90.

Please stamp and return one copy for our files.

Sincerely,

Gerard J. Waldron

Gerard J. Waldron, Esq.*
Attorney for Stations
Representatives Association

GJW:pkh

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Broadcast Television Advertising	)	MM Docket No. 95-90

To: The Commission

COMMENTS OF THE STATION REPRESENTATIVES ASSOCIATION

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Television Advertising	)	

To: The Commission

COMMENTS OF THE STATION REPRESENTATIVES ASSOCIATION

The Station Representatives Association ("SRA"), by its attorneys, hereby respectfully submits its comments on the Notice of Proposed Rule Making in the Matter of Review of the Commission's Regulations Governing Broadcast Television Advertising, MM Docket No. 95-90 ("Notice"). SRA is the association of independent television and radio station sales representatives ("reps") that represent in the television advertising marketplace nearly every commercial television station except those owned and represented by a network.

SUMMARY

SRA and its members, the leading rep firms in the broadcast industry, submit that the network-control-of-station-advertising-rates rule (47 C.F.R. 73.658(h)) and the network-rep rule (47 C.F.R. 73.658(i)) ("the rules") serve the Commission's goals of promoting competition, local programming autonomy and diversity, and free universal television service. Independent reps serve an important function in our broadcasting system, a function that benefits all local stations,[1] advertisers, and ultimately the public. That function is to offer a product, national spot advertising, to national and regional advertisers that competes effectively with the network's product, network advertising. By making national spot advertising a reasonably interchangeable substitute for some network advertising, independent reps promote competition that benefits advertisers and the public. The economic analysis of the competitive effects of eliminating the network-rep rule by MiCRA, submitted as part of these comments, confirms this conclusion, with MiCRA finding that the high degree of substitutability between network and national spot advertising is itself a product of the rule. More significantly, MiCRA concluded that elimination of the network-rep rule is, on balance, likely to raise prices for advertisers.

In addition, independent reps play a crucial role as program and business advisors to broadcasters. That role, which includes helping stations develop and implement overall program strategies and advising stations on local and syndicated program decisions and on network preemptions, is not fully appreciated in the Commission's Notice. Yet that role would be severely compromised, if not gutted entirely, if the rep firms representing those stations were owned by the networks with which they were affiliated. To put the matter pointedly, can anyone imagine a network-owned rep company advising the local affiliate to preempt network programming?

1/ "Local stations" or "affiliates" refers to local television stations that are affiliated with a network but are not owned and operated by a network. "O&Os" refers to television stations owned and operated by a network.

Nor is there any respect in which the public would benefit from these rules being repealed. These rules are being reviewed at the Commission's own initiative; no party stepped forward proposing to eliminate them. More importantly, however, no party, except the networks which seek to rep local stations, would benefit from their repeal, while independent rep firms, advertisers, and local stations, especially small and medium-size stations, would suffer due to a concentration of power over the pricing and supply of national advertising in the hands of the networks. These deleterious effects would be felt by the public, which would be ill-served by repeal. For all these reasons, the network-rep rule and the network-control-of-station-advertising-rates rule should be retained in their present form.[2/]

2/ SRA appreciates the important role played by the networks and their programming. These comments are not intended to denigrate either -- only to channel and confine the networks' power and scope of activity within appropriate limits. Their inability to rep their independently-owned affiliates does not compromise or undercut their ability to perform their traditional network tasks.

I. BACKGROUND.

A. History of These Rules Reveals Long-Standing Concern for Competition and Diversity.

The Commission originally promulgated the network-rep rule in 1959.[3] The principal purpose of the rule was to prevent a network from playing two inherently conflicting roles by serving as the sales agent for both itself and its affiliates -- a rationale that remains compelling today.[4]

In 1947, the National Association of Radio Station Representatives, SRA's predecessor, filed a complaint with the Commission alleging that the practice of national radio networks serving as national spot sales representatives for their affiliates had injurious effects on the independence of those affiliated stations. The Commission declined to take any action with respect to the complaint at that time.[5]

But the issue of network-affiliate relations was clearly a matter of public policy concern. It grew in prominence as television emerged as a vital force in the

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[3] The network-rep rule, 47 CFR § 73.658(i), states: "No license shall be granted to a television broadcast station which is represented for the sale of non-network time by a network organization or by an organization directly or indirectly controlled by or under common control with a network organization, if the station has any contract, arrangement or understanding, express or implied, which provides for the affiliation of the station with such network organization: *Provided, however,* That this rule shall not be applicable to stations licensed to a network organization or to a subsidiary of a network organization."

[4] *Report and Order,* Docket No. 12746, 27 FCC 697, 714-19 (1959) (*Network Spot Sales Report and Order*), *reconsideration denied*, 28 FCC 447 (1960); *Network Broadcasting*, Report of the Network Study Staff to the Network Study Committee (Oct. 1957), *reprinted in* Report of the House Committee on Interstate and Foreign Commerce, H.R. Rep. No. 1297, 85th Cong., 2d Sess. 536-39 (1958) (*Barrow Report*).

[5] *See* Public Notice, Report No. 1701 of Broadcast Action of the FCC, July 21, 1950.

country's economic and cultural life. Even before the network-rep rule was adopted in its present form, the Commission had proscribed network control of television affiliates' advertising rates as far back as 1946 (now codified at Part 73.658(h)), in order to ensure unfettered competition between networks and affiliates for national advertising.[6]

Then in the mid-1950s, the specially appointed Barrow Commission studied a broad range of issues pertaining to the network-affiliate relationship. Among other things, it concluded in the 1957 Barrow Report that, given the opportunity, a network representing its television affiliates might raise the prices of national spot advertisements to artificially high levels so as to gain an unfair advantage in pricing network advertising.[7] Accordingly, in 1959 the Commission adopted Section 73.658(i) of its rules to prohibit networks from representing their own affiliates. The Commission acted because it believed that without this safeguard the networks could (a) inhibit competition in the national advertising market, and (b) impinge upon the obligation of local broadcasters to program their stations consistent with the public interest of their communities.

In the late 1970s, the Commission requested a further special study, and it culminated in release of the 1980 Network Inquiry Report. That Report reexamined the

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[6] *Rules Governing Television Broadcast Stations*, 11 Fed. Reg. 33, 37 (Jan. 1, 1946). The control-by-networks-of-station-rates rule states: "No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization under which the station is prevented or hindered from, or penalized for, fixing or altering its rates for the sale of broadcast time for other than the network's programs."

[7] *Network Spot Sales Report and Order* at 714-19; *Barrow Report* at 536-39.

network-rep rule and concluded that eliminating it would harm competition for sale of national advertising between networks and affiliates.[8/] It also recommended, however, that the Commission consider repeal of the rule because networks might be in a position to offer affiliates national spot representation at lower transaction costs than independent rep firms.[9/] The Commission did not act on this latter suggestion.

A decade later in 1990, the Commission again reviewed the rule but explicitly refused to repeal it, determining instead that no change was warranted.[10/] The Commission found just five years ago that the rule prevents networks from exerting undue influence over affiliate programming decisions, and that it fosters competition in the local and national broadcast advertising markets. The Commission's decision recognized that the rule serves the important goal of enabling affiliates to continue as economically viable and independent programming outlets. It also reflected the fact, noted in the Report and Order, that most of the commenters in the proceeding opposed any change in the rule.

Thus, the Commission has reviewed the network-rep rule twice in the past 15 years, and has concluded on both occasions that the rule serves the public interest. Though the instant Notice poses a number of questions about how the television industry

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8/ Network Inquiry Special Staff, *New Television Networks: Entry, Jurisdiction, Ownership and Regulation, Final Report* (Oct. 1980) (*Network Inquiry Report*).

9/ For a further discussion of the economic study underlying the Report, and how the finding of lower transaction costs has been challenged by subsequent research, including some done by the authors of the 1980 study, see MiCRA, "An Economic Analysis of the Competitive Effects of Eliminating the Network Representation Rule," by MiCRA (Frederick R. Warren-Boulton) at 13-16.

10/ *Report and Order,* BC Docket No. 78-309, 5 F.C.C.R. 7280 (1990).

has changed, a thorough analysis of the policy and rationale for the rule shows that retention of the network-rep rule continues to serve the same goal.

B. Independent Station Reps are Essential to Business and Programming Aspects of Local Broadcasting.

Television advertising consists of three major market segments:

Network advertising. This is advertising time sold by the networks to national advertisers that falls within network programming, and that is distributed by the networks as part of the programs they provide to affiliates. Affiliated stations receive no direct share of this network advertising revenue, but they receive network compensation for carriage of these programs. This compensation represents a very small percentage of a station's overall revenue (less than 10 percent).

National spot advertising. This is advertising time sold by rep firms on behalf of local stations, at prices agreed to by the stations and rep firms, to national and regional advertisers. The "spots" appear within or adjacent to network programs in slots set aside by the network for local station advertising, or more frequently, in other programs purchased or originated by local stations themselves (such as local news). National spot advertising represents some 45 to 50 percent of a typical affiliate's revenue.

Local spot advertising. This is advertising time sold by local stations directly to local advertisers, which also falls within the time allotted by the networks for station-arranged advertising or within locally produced or syndicated programming. It represents the balance (40 to 45 percent) of an affiliate's revenue.

* * *

Independent reps play a crucial role in the establishment and smooth functioning of these markets by serving as intermediaries between local stations across the country and national advertisers. Independent reps benefit local broadcasters and national and regional advertisers because they "make the market" for national and regional spot advertising. Just as a "market maker" on Wall Street finds many sellers willing to sell stock to an institutional buyer, so does a rep firm "find" local stations willing and able to sell time to a national or regional advertiser. The transaction costs for a single station, or even a group of stations, to have a sales force selling to national advertisers would be so high as to be prohibitive. A rep firm, however, is able effectively and economically to serve this role across a region or across the country because it represents many stations on an ongoing basis. These economies of scale give rep firms the client base to maintain a sales force that contacts national advertisers -- <u>a sales force that competes head-to-head with the networks' sales force</u>. Small and medium-size stations especially benefit from this market mechanism, because it enables them to sell time economically to large institutional buyers to which they might not otherwise have practical access.

As discussed fully in section II, advertisers reap financial gain from the vitality of independent reps and the competition on station advertising rates because they obtain a competing vehicle for spreading their commercial messages, at far lower transaction costs than if they had to seek out local stations individually. The robustness of competition among independent reps benefits stations and advertisers and ultimately the public. Stations also benefit from thriving competition within the independent rep business. Adding network reps to this mix, or letting networks control station advertising rates, would injure competition in both respects.

In addition to selling national spot time for local stations, reps serve a critical, though little understood role as independent advisors to local stations on programming and business issues. Independent reps, because of their extensive knowledge of the broadcast industry, assist local stations in making programming and scheduling decisions. They counsel their station clients on the mix of network, syndicated, and local programming that will serve their communities of license. This advice addresses, among other issues, what syndicated programming a station should select; how the affiliate should be positioned in the "access hour" that leads into prime time programming; what its local news should try to accomplish within the competitive local marketplace; and what network programming should be preempted in favor of syndicated or local programming.[11/]

Small and medium-size television stations particularly benefit from the independent advice and expertise they receive from rep firms. Whereas some stations in the top markets may be able to afford more top management personnel or special consultants to help them with programming and strategic decisions, those experts are beyond the budgets of other stations. Stations value reps not only for their expertise but also for their independence and view reps as their counsellors and agents.

[11/] Station reps have filled this role so successfully that program directors at many television stations, commonplace 10 to 15 years ago, have greatly diminished in number.

II. NETWORKS COMPETE DIRECTLY WITH STATIONS FOR ADVERTISING EXPENDITURES.

One of the frequently articulated, and laudable, goals of this Commission is to encourage competition.[12] The Commission has taken steps to promote competition in various aspects of the communications industry, on the grounds that competition encourages innovation, expands supply, lowers prices, and, most fundamentally, benefits consumers. The network-rep rule and the network-control-of-advertising-rates rule should not be repealed because they advance the goal of promoting competition between networks and stations in the national and regional advertising markets.

National spot advertising is a reasonably interchangeable substitute for network advertising and competes directly with it, since it offers national and regional advertisers, on a comparable cost, the ability to reach a national audience with their commercial message. The goal of an advertising campaign is to expose a commercial message to a particular demographic group or groups with sufficient frequency that the advertiser has confidence its message has been affectively conveyed. The national spot

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[12] *See, e.g.,* Statement of Reed E. Hundt, Chairman of the Federal Communications Commission, on Reauthorization of the FCC, before the Subcomm. on Telecommunication and Finance, Comm. on Commerce, U.S. House of Representatives (June 19, 1995); In the Matter of Applications of Metromedia Radio & Television, Inc. to News America Television Incorporated For Assignment of Licenses for Television Stations, *Memorandum Opinion and Order*, 102 F.C.C.2d 1334 (adopted Nov. 14, 1985, released Nov. 27, 1985) (Fox Network decision); Petition for Rulemaking to Amend Television Table of Assignments to Add New VHF Stations in the Top 100 Markets and to Assure That the New Stations Maximize Diversity of Ownership, Control and Programming, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 63 F.C.C.2d 840 (1977); *Report and Order*, 81 F.C.C.2d 233, 261-67 (1980), *recon. denied*, 90 F.C.C.2d 160 (1982).

market, by offering advertisers a mix of commercial time on local stations within and adjacent to network shows and during local news and syndicated programs, offers an advertiser the ability to achieve its audience reach at comparable costs.

MiCRA's analysis confirms this conclusion that network and national spot advertising are "close substitutes" or "reasonably interchangeable." MiCRA's review of the trade and academic literature indicates no serious debate on the question of whether network and national spot advertising are "close substitutes."[13/] Moreover, MiCRA's analysis of the market, using the rigorous framework ordinarily applied to a horizontal or semi-horizontal merger, further supports the conclusion that network advertising and national spot advertising are close (if not the closest) substitutes for each other.[14/]

Competition between networks and affiliates in the sale of broadcast time to national advertisers is possible only because rep firms offer advertisers outlets in markets across a region or across the country, thereby approximating the reach and economies of network advertising. For example, just this year, one of the largest purchasers of network time reduced its network advertising because it could achieve the same audience reach through national spot advertising at comparable or lower costs. The vehicle this major advertiser used was a purchase of national spot time on an "unwired network," that is, a collection of affiliates across the country assembled by an independent rep firm that approximated the scope and reach of a network. There are

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13/ MiCRA, "An Economic Analysis of the Competitive Effects of Eliminating the Network Representation Rule," ("Economic Analysis") at 2-3.

14/ *Id.* at 3-8.

numerous other examples of advertisers which, though not abandoning network advertising altogether, have used "unwired networks" put together by independent rep firms in lieu of a network buy. This development provides hard evidence that competition is alive, and growing, between networks and independent reps.

Interestingly, the networks also are innovating, seeking to take away some of the national spot market. Using digitalization in their satellite distribution technology, the networks have begun to offer regional buys to national and regional advertisers. The networks have been aggressively pursuing this market and not surprisingly this development has caused some conflict with the affiliates. As the technology allows, networks will be able to offer increasingly targeted geographic buys to regional advertisers.

These developments indicate that healthy competition exists between networks and independent reps acting on behalf of local stations. Each competitor in the market has taken steps to innovate and imitate, classic signs of open competition in a market. The network-rep rule promotes this competition, because it ensures that the reins in control of network advertising are not in the same hands as the reins controlling national spot advertising.

Independent rep firms make the national spot market more attractive to advertisers. MiCRA finds that one of the major functions of the independent reps is to change the characteristics of the product produced by affiliates and independent stations, transforming capacity that otherwise would be used only by local advertisers into a product that is purchased by regional and national advertisers in lieu of network advertising.[15] MiCRA concludes: "independent reps transform a product that would be a weak or limited substitute for network advertising into a product that more closely resembles network advertising, especially at the regional level. The function of reps -- to assemble, albeit on an ad hoc basis, a wide audience of viewers attractive to national and regional advertisers -- is very similar to the function carried out in a much more systematic and controlled way by the networks. As independent reps have innovated, with products such as 'unwired networks,' the characteristics of their product has become increasingly similar to that of network advertising, especially network advertising that is provided on a regional basis and/or bought in the scatter market."[16]

Other modes of advertising provide less meaningful substitutes for network advertising.[17] Cable networks do not offer effective competition. First, because many television households do not have cable, cable network advertising cannot reach as many viewers as broadcast network advertising. Second, because the average cable program has far fewer viewers, advertisers cannot reach a given share of cable households without exposing some viewers to an ad many times. Thus, while cable networks may give certain niche advertisers an outlet for their "narrowcasting" message, or may be

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15/ *Id.* at 8.

16/ *Id.*

17/ *See, e.g.*, S. Besen *et al.*, *Misregulating Television* (1984) at 79-80.

used to complement a national broadcast buy, as a whole cable network advertising is not reasonably interchangeable with network television advertising.[18]

Indeed, the recent "mega" deals involving two of the national television networks were driven by one indisputable fact: Despite the hoopla about the "information superhighway" and a 500-channel cable world, no medium can come close to broadcast television for its ability to assemble tens of millions of Americans across the country for advertisers.[19] Thus, some 70% of viewing in cable homes is of over-the-air, advertiser-supported television channels. And for the week ending July 23, 1995, the two 19th rated television network programs ("Sunday Movie: Firebirds" on ABC, and "Sunday Movie: Substitute Wife" on NBC) each had a far higher rating than the top-rated cable program for that week (the O.J. Simpson trial on CNN). The two network programs had ratings of 10.0 each, while the top cable program's rating was 4.2.[20]

National spot advertising is a close substitute, i.e., reasonably interchangeable, with network advertising, and together they provide advertisers with the ability to reach tens of millions of Americans at a specific time to view a particular message. Independent station reps make that competition possible, and inhibit the exercise of network market power, by making national spot advertising efficient, expert,

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[18] Local cable systems have been dabbling in national spot advertising, but the effort is still in its infancy. *See* D. Blair *et al.*, "Reaching for Audiences: Economies of Scale in Television Advertising," Working Paper (July 17, 1987).

[19] *See* Carter, "Broadcast Networks Come Back Strong: Once in Decline, TV's Old Giants Roar," *New York Times*, August 2, 1995, at D1.

[20] *Adweek*, July 31, 1995.

economical, and appropriately targeted. Indeed, MiCRA finds that "the degree of substitutability between network and spot advertising is itself a product of the rule -- for example, it seems unlikely that there would be any 'unwired networks' today, for example, if networks represented affiliates. One clear potential motive of the networks in attempting to replace the independent reps would be to halt or even reverse the transformation of national spot capacity into a product that is increasingly substitutable for network advertising."[21/]

III. REPEAL OF THE NETWORK-REP RULE WOULD EVISCERATE THE INDEPENDENT REP INDUSTRY.

Repeal of the network-rep rule would bring an end to the vigorous competition between network advertising and national spot advertising described above. Networks that "repped" their affiliates would be in the position of selling both network advertising and national spot advertising, in many cases to the same advertisers. This merger of the two competing forces in the national television advertising markets would also eviscerate the independent rep industry, and thereby harm competition and disserve the public.

Independent reps would lose out to network-owned rep firms in many top markets, because networks continue to have power over affiliates. That power stems from a number of sources. Networks have the most bargaining power vis-a-vis stations in large markets where there are many competing stations and still only four networks (counting Fox). That is because a network affiliation is of substantial value to a local

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[21/] Economic Analysis at 9.

station. The Notice points to changes in the industry as diminishing network power, suggesting that the value of an affiliation, or the threat of "disaffiliation," is diminished. In that discussion, long-term contracts are frequently cited as evidence that the networks have less power and affiliates have more. But long-term contracts cut two ways: a long-term agreement may give an affiliate some security with its network, but those same agreements mean a local station's option to change affiliation is no longer available, since the other stations in the market also have long-term contracts. Consequently, the threat of a network "disaffiliating" with a local station may be diminished, but, equally, the threat of the affiliate "crossing the street" to another network has been reduced. The Commission also must recognize that these affiliation contracts, though "long-term," typically run seven to ten years. Thus, by the end of this decade, networks and some of their affiliates will begin renegotiating. Consequently, the tension surrounding affiliation is as complex as ever.

The second reason why allowing networks to rep their affiliates would eviscerate the independent rep industry is that, with repeal of Fin/Syn[22/] and the prime time access rule,[23/] networks in the near future will be an important supplier of syndicated programming to their affiliates, and others. This situation will give the

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[22/] Review of the Syndication and Financial Interest Rules, §§ 73.659-73.663 of the Commission's Rules, *Second Report and Order,* 8 FCC Record 3282, *recon. granted in part*, 8 FCC Record 8270 (1993), *aff'd sub nom. Capital Cities/ABC, Inc. v. FCC*, 29 F.3d 309 (7th Cir. 1994).

[23/] In re Review of the Prime Time Access Rule, § 73.658(k) of the Commission's Rules, *Report and Order,* MM Docket No. 94-123, Decision No. FCC 95-314 (released July 31, 1995).

networks powerful leverage. A network with a popular show for syndication, such as "Home Improvement," will be in a position to sell it to almost any station in a market. The network affiliate in each market, on the other hand, will probably be anxious to obtain that syndicated show, since it will want to be branded in its market as the channel with "Home Improvement." If the network-rep rule is repealed, this environment would enable the network to proffer to the affiliate the syndicated show and network representation as a package deal. The network would obtain its market price for the program (which, presumably, it could have collected from other stations in the market); the network would help boost an affiliate with popular syndicated programming; and the network-owned rep firm would have a new client.[24/].

Thus, a network would not only have the ability to force its affiliates to change their rep firm in favor of the network, but also would have the incentive. As discussed in Section IV, a network that (i) sells network advertising time and (ii) also represents affiliates that seek to sell national spot time in or adjacent to the same network programs, obviously would have economic incentives to sell more of the former and less of the latter. These incentives will push a network to want to control the sale of national spot advertising, because such control will enable it to maximize its revenues on network advertising.

24/ This scenario highlights a concern the Commission must confront. Given the rule changes adopted by the Commission relating to other network activity, the Commission should proceed carefully. These other changes may create power and leverage for the networks that the Commission does not yet appreciate. SRA is concerned that this leverage could be exercised to wipe out the independent rep industry.

It is likely that the networks would take advantage of their leverage to gain station representation in the top markets, since that is where the largest ad dollars flow and where they have the most bargaining power since the number of stations in these markets is greatest. If the top markets were dominated by network-owned rep firms, the independent rep industry would have little inventory to sell in large markets and would shrink substantially, since the small and medium-size stations could not sustain the current number of independent rep firms. An exit of independent rep firms would continue the downward spiral, because fewer independent rep firms would mean that no rep firm would have a large enough station client base to cover much of the country. The result would be that the national spot market would be less attractive and less robust.[25/]. At this stage, networks could shift advertisers toward network time and away from national spot time and reduce the inventory of slots they make available for sale by stations and shift the inventory to local spots. At that point independent reps could be largely irrelevant to the broadcast industry and in dealing with national advertisers.

25/ Fewer independent rep firms selling a small section of the country to national advertisers would mean those advertisers must deal with two or more rep firms to obtain their desired coverage. This would raise the cost and diminish the appeal, and substitutability, of national spot advertising.

IV. THE THREAT OF UNAVOIDABLE CONFLICTS OF INTEREST DICTATES RETENTION OF THE NETWORK REPRESENTATION RULE.

A. Competition Policy Indicates That Economic Contest Between Unaffiliated Parties Serves Public.

A fundamental tenet of Commission competition policy has been that competition is enhanced when the number of independent sellers of a product or service is increased.[26] The Commission has found that the obverse of this is also true: lowering the number of unaffiliated sellers of a product or service diminishes competition.[27] The siren song of promised "synergies," or lower transaction costs,[28] has generally not enticed the Commission to diverge from its basic position that an economic contest between unaffiliated parties is the best way to achieve competition and benefit the public. In this proceeding the claim of lower transaction costs should be rejected without hesitation, since the latest ecometric studies, as discussed in detail by MiCRA, finds no reduction in transaction costs if the rule were repealed.[29]

26/ The Commission has pursued this principle in, *inter alia*, long distance resale, cellular resale, and most recently in video dialtone.

27/ The Commission's rules prohibiting a cellular company from owning a PCS license within its service area is but one of many examples of this principle.

28/ Lower transaction costs are always the claimed advantage of those touting the "synergies" of certain economic combinations. To the contrary, MiCRA reveals that the earlier studies on lower transaction costs have been rebuked by subsequent research. See Economic Analysis at 12-16. In addition to this empirical analysis, SRA relies on the real-world experience of local affiliates across the country who believe that their interests are best served by use of independent rep firms, which are loyal only to the affiliates. That is why broadcasters across the country have supported retention of the rule in the past and are expected to do so in this proceeding.

29/ *See* Economic Analysis at 14-16.

These first principles of competition policy are all implicated by the instant Notice. Repeal of the network-rep rule would decrease substantially -- in many of the top markets, by 50 percent -- the number of unaffiliated entities selling broadcast time to national advertisers.[30] Three or four players would control the vast bulk of national broadcast television advertising inventory. Repeal of the rule would diminish competition and discourage innovation. Repeal of the rule, in short, would violate fundamental tenets of the Commission's competition policy.

B. Unavoidable Conflicts Would Result in Economic Harm to Advertisers, and Biased Programming Advice.

1. Economic Harm to Advertisers and Local Stations.

A network that sells network advertising time and that also represents affiliates which seek to sell national spot time in or adjacent to the same network programs would have economic incentives to sell more of the former and less of the latter. That is because the network would retain almost all of the revenues of the former and would receive only a small share of the latter revenues. These incentives would, therefore, induce networks to shift inventory available for national spots to the local spot advertising market.

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[30] Currently, if an advertiser wants to reach the top 75 markets during the NCAA Basketball Tournament, it can buy network advertising, which would be a slightly overinclusive buy, or it could buy time from the network's competitor, independent rep firms. If a network succeeds over time in "repping" stations in the top 75 markets, then that same advertiser would face a different choice: it could buy time from the network, or it could buy time from a subsidiary of the network, the network-owned rep firm. That advertiser would be at a disadvantage in bargaining with the network, since the network could influence the price of competing products.

Inventory for national spots could be reduced in another manner. Networks extract a premium from national advertisers if they promise an exclusive position to a particular advertiser for a high-profile event. For instance, it has been reported that Coca-Cola has paid $60 million for exclusive rights to all non-alcoholic beverage advertising to air during the 1996 Olympics, while General Motors paid more than $50 million for the same privilege in the domestic car and truck categories.[31] Because Coca-Cola has purchased the exclusive beverage advertising franchise, there will be no Pepsi ads or other beverage ads aired by the network during the Olympics, or at least no beverage ads in network advertising slots. Affiliates can sell time to Pepsi or other beverage makers, on a national spot basis, unless they are prohibited by their network from doing so.

Obviously, a network that extracts a substantial premium from an advertiser for an exclusive advertising franchise in its product line will want to protect that premium by making sure the exclusivity is not infringed by local station advertising decisions. Affiliates, on the other hand, have an incentive to sell available spot time to the highest bidder. Thus, competing beverage makers could resort to the national spot advertising market in particular high-profile events to help achieve their advertising goals.

However, repeal of the network-rep rule raises the prospect that a network-owned rep firm selling national spot time for affiliates would be in a position to

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[31] *See* "NBC Sets Olympic Ad Record," *Broadcasting & Cable*, June 26, 1995, at 6.